

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Harui et al. Attorney Docket No: BIOL0070
Serial No: 10/757,971 Group Art Unit: 3751
Filed: January 15, 2004 Examiner: Maust, Timothy
Confirmation No: 4262

Title: CELL SUSPENSION ROTATING FLUIDIC PUMP

FOR ELECTRONIC FILING

ELECTION TRANSMITTAL LETTER

Bellevue, Washington 98004

February 17, 2009

TO THE COMMISSIONER FOR PATENTS:

A. Election Transmittal

Transmitted herewith is an election in the above-identified patent application.

- ☒ 1. No additional claim fee is required, as shown below.
☐ 2. The claim fee has been calculated, as shown below.
☐ 3. Fees, as calculated below, in the amount of \$_____, will be charged to a credit card during electronic submission.

B. Request for Constructive Petition for Extension of Time

It is requested that any concurrent or future reply submitted in the present application requiring a petition for an extension of time under 37 CFR 1.136(a)(3) for timely submission be treated as incorporating a petition for extension of time for the appropriate length of time. It is also requested that any additional required fees under § 1.17, including all required extension of time fees, be charged to Deposit Account No. 01-1940, thereby constructively petitioning for any necessary extension of time to maintain the present application in a pending state.

<u>Computation of Fee For Claims as Amended</u>					
	<u>Claims Remaining after Amendment</u>	<u>Highest Number Previously Paid For</u>	<u>Present Extra</u>	<u>Rate</u>	<u>Additional Fee</u>
Total Claims	11	43	0	x \$26	\$0
Independent Claims	4	6	0	x \$110	\$0
ADDITIONAL CLAIM FEE					\$
TOTAL ADDITIONAL FEE FOR THIS RESPONSE					\$ <u>-0-</u>

C. Additional Fee Charges or Credit for Overpayment

Please charge any additional fees or credit any overpayment to Deposit Account No. 01-1940.

Respectfully submitted,

/mike king/
Michael C. King
Registration No. 44,832

CUSTOMER NUMBER 25268

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Title: CELL SUSPENSION ROTATING FLUIDIC PUMP

ELECTION IN RESPONSE TO RESTRICTION REQUIREMENT

Bellevue, Washington 98004

February 17, 2009

TO THE DIRECTOR OF THE PATENT AND TRADEMARK OFFICE:

The following is in response to a Restriction Requirement dated February 10, 2009, in which the Examiner restricted the above-identified patent application.

Restriction

The Examiner indicates that there are two groups of patentably distinct inventions defined by the claims in this application, as follows:

Group I - Claim 33, which is directed to a method for dispensing a fluid, which has been classified in class 141; and

Group II - Claims 34-43, which are directed to a method for dispensing a fluid, which has been classified in class 141.

Election:

In response to this Restriction, applicants hereby affirmatively elect the claims of Group II (i.e., Claims 34-43), *with traverse*, subject to applicants' right to file one or more divisional applications directed to the non-elected inventions.

1 Traversal of Restriction Requirement

2 Applicants respectfully traverse the restriction requirement, and submit that Groups I and II
3 should be examined together, because the inventions *DO* overlap in scope and are therefore *NOT*
4 mutually exclusive, and because there is no serious burden with respect to search and examination,
5 particularly because the inventions are classified in the *same* class, and because the element to which
6 the Examiner objects has already been searched. Applicants note that this traverse IS NOT arguing
7 that the claims represent patentably indistinct invention; applicants are merely arguing that it would
8 be efficient to search and examine the inventions together, because they do overlap in scope and they
9 are classified identically, thus it is likely that there will be overlapping search results. Indeed, the
10 search *already performed* has yielded results that are relevant to both Groups of inventions.

11 The Examiner has asserted that the inventions are distinct because the inventions of Groups I
12 and II are directed to related methods. Under MPEP §806.05 (j), the related inventions can be shown
13 to be distinct if:

- 14 (1) the inventions as claimed are either not capable of use together or can have a
15 materially different design, mode of operation, function, or effect;
16 (2) the inventions do not overlap in scope, i.e., are mutually exclusive; **and**
17 (3) the inventions as claimed are not obvious variants.

18 The Examiner explains that the inventions of Groups I and II are directed to different
19 methods, because the element of *a fluid containing substantially uniformly distributed particles* is
20 present in the invention of Group I but not present in the invention of Group II. The Examiner
21 concludes that the inventions of Groups I and II do not encompass overlapping subject matter, and
22 that there would be a serious search and examination burden to examine the inventions together.

23 Applicants respectfully note that under MPEP §806.05 (j), that ALL three requirements must
24 be satisfied in order to show that the related inventions are distinct. However, as discussed below the
25 inventions *DO* overlap in scope, and therefore are *NOT* mutually exclusive as required by the second
26 portion of MPEP §806.05 (j). It must be stressed that this *IS NOT* a suggestion that the inventions are
27 obvious variants, merely a recognition that the inventions do share common features.

28 It may be helpful to reproduce independent claims from each group; noting that the
29 overlapping portions in each claims have been highlighted.
30

1 33. (Currently Amended) *A method for dispensing a fluid containing*
2 *substantially uniformly distributed particulates entrained therein, comprising the*
3 *steps of:*

4 (a) *providing a device* for dispensing a fluid containing substantially
5 uniformly distributed particulates entrained therein, the device including *a container having*
6 *an axis, the container including a volume of the fluid in which is entrained a plurality of*
7 *particulates;*

8 (b) *using the device to rotate the container in which the fluid is disposed*
9 *about a longitudinal axis of the container*, such that the particulates become substantially
10 uniformly distributed within the fluid in the container; and

11 (c) *using the device to dispense the fluid independently of the rotation of*
12 *the container, such that rotation of the container is not required in order for dispensing of*
13 *the fluid to occur.*

14 34. (Currently Amended) *A method for dispensing a fluid containing*
15 *substantially uniformly distributed particulates entrained therein, comprising the*
16 *steps of:*

17 (a) *providing a container having a longitudinal axis, the container*
18 *including a volume of fluid in which is entrained a plurality of particulates;*

19 (b) *rotating the container in which the fluid is disposed about its*
20 *longitudinal axis* using a rate of rotation that results in the fluid, the particulates in the fluid,
21 and the container achieving solid body rotation; and

22 (c) *dispensing the fluid independently of rotating the container, such that*
23 *rotation of the container is not required in order for the fluid to be dispensed.*

24
25 Clearly, there is substantial overlap in scope between Claims 33 and 34: both methods are
26 defined in their preambles using identical language, both methods involve using a container having
27 an axis and containing a *volume of fluid in which is entrained a plurality of particulates*, both
28 methods involve *rotating the container*, and both methods involve *dispensing the fluid*
29 *independently of rotating the container, such that rotation of the container is not required in order*
30 *for the fluid to be dispensed.* Clearly, the subject matter of Claims 33 and 34 extensively overlap.

1 Further, there is simply no evidence that the differences between the inventions are mutually
2 exclusive, as is required by the second component of MPEP §806.05 (j). The Examiner has noted
3 that Claim 33 recites *a fluid containing substantially uniformly distributed particle* in the body of the
4 claim, and Claim 34 does not. However, both Claims 33 and 34 recite that same language in their
5 respective preambles, and for the claims to be mutually exclusive, Claim 34 must not be capable of
6 delivering a *fluid containing substantially uniformly distributed particle*. As the preamble of
7 Claim 34 requires that the recited method be capable of delivering a *fluid containing substantially*
8 *uniformly distributed particle*, logically the methods of Claim 33 and 34 cannot be mutually
9 exclusive. Therefore, the second requirement for the inventions to be distinct under § 806.05 (j), is
10 not met.

11 In addition, applicants note that both inventions have been classified in class 141. Therefore,
12 applicants respectfully submit that it is likely common references will be found for both inventions,
13 indicating that performing the searches together is efficient, rather than burdensome.

14 Finally, applicants note that a *fluid containing substantially uniformly distributed particles* is
15 not a new element at all, as that element was recited in the preamble to both Claim 33 and 34 in their
16 original form, and that element has already been searched. Significantly, the references already cited
17 by the Examiner are relevant to that element, thus there appears to be no logical rationale for
18 determining that examining the inventions of Groups I and II together would be burdensome.

19
20 Respectfully submitted,

21
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23 Michael C. King
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27 SKM/RMA:elm
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